SUPREME COURT, U. S.

FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____Term

No. 74-999

BEDFORD AVIATION, INC.
Petitioner

v.

MASSACHUSETTS PORT AUTHORITY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

For Bedford Aviation, Inc.

Submitted by:

William J. Buckley

537 Thoreau Street

Concord, Massachusetts 01742

TEL. (617) 369-2228

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JURISDICTION

1. The jurisdiction of this court is invoked pursuant to United States Code Title 28, Section 1254 (1) allowing for a review of cases in the Court of Appeals by writ of certiorari upon the petition of any party.

2. An important question of Federal Law is involved which has not been decided by the Court. i.e. whether the word "shall" in Section-376 of the Bankruptcy Act is to be adhered to or disregarded by a referee.

3. The Appeals Court refers to a review and appeal of the Bankruptcy adjudication in Federal Courts as a basis for their decision to affirm the trial court. (Case No. 7478 Bedford Aviation, Inc. Order of Court entered December 16, 1969, and Order of Court entered January 13, 1970.

and Order of Court entered January 13, 1970. The findings in the said review and Appeal Court are contrary to the interpretation given to them by the United States Court of Appeals for the First Circuit in a memorandum and order dated November 11, 1974. The Supreme Court has the right to review and clearify decisions at the Federal District Courts.

4. The General Orders in Bankruptcy are prolmulgated by the United States Supreme Court pursuant to statutory authority to govern bankruptcy proceedings. 28U.S.C. Section 2075.

OPINION BELOW

In the opinion entered June 28, 1974, the court treated the motion to dismiss as a motion for summary judgment The courts own motion for summary judgment was allowed. Judge Andrew Caffrey stated, "Consequently, I decline to entertain this belated application by plaintiff for declaratory relief, both because of its belatedness and because of the fact that the record before me shows that the termination of the lease was not illegal. In fact, termination of a lease because of bankruptcy is expressly made enforceable by 11 U.S.C.A. Section 110 (b), the provisions of which would have automatically terminated the lease sixty days after October 4, 1968, even if defendant had not exercised its

contractual right to do so at the earlier date. Accordingly, I conclude that there is no issue of material fact between the parties and that there is no relief, declaratory or injunctive, to which plaintiff is entitled herein.

The motion for summary judgment is allowed.

In a memorandum and order entered November 11, 1974 the United States Court of Appeals for the First Circuit affirmed Judge Andrew Caffrey's decision and stated, "Appellant has attempted to raise a number of issues with regard to its adjudication as a bankrupt, but we need not reach those questions here. Even if we were to find the correctness vel non of the adjudication to be relevant to this action, we could not permit

collateral attack upon a bankruptcy adjudication which has already withstood direct review and appeal."

CASES BELIEVED TO SUSTAIN POSITION

Upon the petitioner's claim that this court has not previously decided the instant point of law, nevertheless the petitioner cites the following two cases to sustain the petitioner's rights to being before this court:

Elliot v. Peirsoll, 26 U.S. (1Pet.) 328 7 L. Ed. 164 (1828)

Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment until reversed is regarded as binding in every other court. But if it acts without authority, its judgments and orders are regarded nullities. They are not voidable, but simply void: and form no bar to a recovery sought. Even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered in law, as trespassers.

Marbury v. Madison, 1 Cranch 137; 2 L.Ed 60 (1803)

Chief Justice Marshall ruled that if the right of a person has been violated, the laws of the United States afford him remedy and that the Constitution states that the Supreme Court will have appellate jurisdiction except in

cases in which it has original jurisdiction, and therefore confirm this court's power to pass on the constitutionality of laws.

REASONS FOR GRANTING WRIT

That the petitioner has, is and will, continue to suffer irreparable damages as a result of the decision of the lower court.

That the only last and real course of proceedings left for the petitioner is this Petition for Writ of Certiorari to issue in order to protect the procedure in bankruptcy cases.

Article XVII (A) of the lease between the Mass Port Authority and Bedford Aviation, Inc. entitles "Termination by Lessor" reads as follows:

"A. In the event that Lessee shall file a voluntary petition in bankruptcy or bankruptcy shall be instituted against it and not dismissed within thirty (30)

days or that a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any State or Federal reorganization act, or that a receiver of Lessee's assets shall be appointed and such taking or appointment shall not be stayed or vacated within a period of thirty (30) days, Lessor May thereupon terminate this lease by twenty (20) days prior written notice to Lessee. In addition, if Lessee shall fail to perform, keep and observe any of the terms, covenants or conditions herein contained on the part of the Lessee to be performed, kept or observed, other than the payment of rent, Lessor may give Lessee notice in writing to correct such condition or cure such default and, if any

such condition or default shall continue for thirty (30) days after the receipt of such notice by Lessee, and if within such period of time Lessee has not prosecuted with diligence the correction of such condition or default, Lessor may subject to the provisions of Clause B below, terminate this lease forthwith and the term hereby demised shall thereupon cease in the same manner and to the same effect as if it were the expiration of the original term. If Lessee fails to pay any installment of rent when due, Lessor may so terminate this lease on ten (10) days notice rather than thirty (30) days after notice of such default. Any termination by reason of this Article shall not affect or impair the right of Lessor to recover damages

occasioned by such default.

The provisions of this lease with regard to bankruptcy against the Lessee are improper and illegal. This is an attempt to circumvent the Bankruptcy Act and to ouse the Federal Court of jurisdiction. Once the court takes jurisdiction, an executory contract can only be terminated by the Bankruptcy Court. Unilateral termination by the Lessor sending written notice to the Lessee, while Lessee is in a Chapter XI Arrangement, is void.

On the following page is the Memorandum and Order of the United States Court of Appeals for the First Circut which Bedford Aviation, Inc. asks the U. S. Supreme Court to review. Its order is based on the fact that the bankruptcy adjudication has withstood the arrest reviser and appeal.

However, this case was never revised and appealed. The Appeals Court on the said appeal stated that persons who are not members of the bar cannot act as legal counsel for a corporation. The case went on to say it behooves Bedford Aviation, Inc. to obtain legal counsel. These cases are copied on the pages following the Memorandum and Order of Case No. 74-1264.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 74-1264

BEDFORD AVIATION, INC.,
Plaintiff, Appellant,
v.
MASSACHUSETTS PORT AUTHORITY,
Defendant, Appellee.

Before Coffin, Chief Judge,
Aldrich and McEntee, Circuit Judges.

MEMORANDUM AND ORDER

Entered November 11, 1974

Appellant filed in the district court a civil action in the nature of a petition for declaratory judgment, and appeals from the court's grant of summary judgment to appellee. We affirm. Appellant challenges the legality of the cancellation of a lease on which it was lessee and appellee the lessor, but this termination was authorized by Article XVII of the lease, since a petition in bankruptcy was filed against appellant and not dismissed within 30 days. Appellant has attempted to raise a number of issues with regard to its adjudication as a bankrupt, but we need not reach those questions here. Even if we

were to find the correctness vel non of the adjudication to be relevant to this action, we could not permit collateral attack upon a bankruptcy adjudication which has already withstood direct review and appeal.

Affirmed.

By the Court:

Dana H. Gallup
Clerk

No. 7478

In the Matter of

BEDFORD AVIATION, INC.
Bankrupt, Appellant.

ORDER OF COURT

Entered December 16, 1969

The principle is well established that persons who are not members of the bar cannot act as legal counsel for parties other than themselves. A corporation falls within this principle.

In the present case one Pace, who apparently is an officer of appellant Bedford Aviation, Inc., proposes to represent it on its appeal. He is not a member of the bar. According to the statement of proposed issues submitted on behalf of appellant by Mr. Pace there are criticisms of the reasons and motives and of alleged irregularity in the conduct of various attorneys in the course of the proceedings in the bankruptcy court. These criticisms may or may not be well taken. However, at a minimum, the court, and the persons involved, are entitled to have any prosecution of such claims endorsed by a good faith representation of merit by another member of the bar. See, e. g., F.R. Civ. P. 11. A layman is in no position

to give such endorsement.

The appearance of Robert V. Pace on behalf of appellant is hereby ordered returned, and the "Designations and Issues" is hereby ordered stricken and returned. If appellant wishes this appeal prosecuted, it behooves it to obtain legal counsel.

By the Court:

ROGER A. STINCHFIELD, Clerk

By /s/ Dana H. Gallup
Chief Deputy Clerk

cc. Bedford Aviation, Inc.
Mr. Braunstein

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7479

In the Matter of

BEDFORD AVIATION, INC.
Bankrupt, Appellant.

ORDER OF COURT

Entered January 13, 1970

On appellee's motion to dismiss the appeal, and upon the court's full examination of the contents of the brief, although same has not been filed because improperly tendered in violation of our order of December 16, 1969, the within appeal is dismissed, both for want of prosecution, and under local Rule 5 because the court can find no semblance of merit therein.

By the Court:

/s/ Dana H. Gallup
Clerk.

cc: Mr. Pace
Mr. Braunstein

STATUTORY PROVISIONS

UNITED STATES CODE TITLE 28 SECTION 1254.

SUPREME COURT AUTHORITY OVER BANKRUPTCY PROCEEDINGS (28 USC. Section 2075).

BANKRUPTCY ACT SECTIONS 321, 376, 378, AND 311.

QUESTIONS PRESENTED

The questions presented by this Petition for Writ of Certiorari do bring questions within the purview of this Most Honorable Court and include:

The legality of the cancellation of the lease that the Massachusetts Port Authority had with Bedford Aviation Inc. in the manner in which it was cancelled. Bedford Aviation, Inc. was under a chapter XL arrangement when the lease was unilaterally cancelled by the said Port Authority.

2. The legality of the wording of the said lease in regards to termination while a corporation is in bankruptcy. Such wording in the lease is an attempt to ouse the court of jurisdiction.

3. The correctness of the United

States Court of Appeals for the First Circut when it stated that the bankruptcy adjudication has already withstood direct review and appeal. (See order entered January 13, 1970 and December 16, 1969).

4. The violation of Section 376, 378, 311, and 321 of the Bankruptcy Act.

STATEMENT OF THE CASE

1. This is a civil action in the nature of a Petition for Declaratory Judgment, brought by Bedford Aviation, Inc. against the Massachusetts Port Authority. Bedford Aviation, Inc. was incorporated under the laws of the Commonwealth of Massachusetts in January, 1965. On December 27, 1967, the Appellant (Bedford Aviation, Inc.) was given a lease at Bedford Airport by the Appellee.

2. The Port Authority filled a Motion to Dismiss. The District Court Judge on his own decided to treat the Motion to Dismiss as a motion for Summary Judgment.

3. On May 3, 1968, Bedford Aviation, Inc. was petitioned into involuntary Bankruptcy. (see Exhibit B in appendix) On June 10, 1968, Appellant filed a

petition for a Chapter XI arrangement. (See exhibit C in appendix) The lease with the Port Authority was never included in the assets of Bedford Aviation Inc.

4. In October of 1968 Bedford Aviation, Inc. was adjudicated bankrupt.

5. The Port Authority cancelled the lease in September, 1968, when Bedford Aviation, Inc. was under a Chapter XI arrangement, the Massachusetts Port Authority unilaterally cancelled the lease, on the grounds that Bedford Aviation was in bankruptcy.

6. Claims of the petitioners putting Bedford Aviation, Inc. into bankruptcy were false.

Plaintiff corporation, through its President Robert V. Pace, who is not an

attorney, filed a petition for a District Court review of the referee's adjudication and on September 30, 1969 Judge Murry dismissed Plaintiff's petition for review. An appeal was taken by the Plaintiff to the Court of Appeals for the First Circuit from Judge Murrays order of dismissal and on December 16, 1969 the Court entered an order stating, "The principle is well established that persons who are not members of the bar cannot act as legal counsel for parties other than themselves." The case stated that Robert V. Pace, who was a layman could not represent his Corporation. The Court went on to state, " If appellant wishes this appeal prosecuted, it behoves it to obtain legal counsel. In the same case No. 7473 the a appellant

filed a motion to dismiss the appeal. The Court allowed the appeal to be dismissed both for want of prosecution, and under local Rule 5 because the Court can find no semblence of merit therein."

Both the trial court and the appeals court in the present case have grasped at the fact that the appeals court in the former review stated that, "...the court can find no semblence of merit therein." We claim that this statement is taken out of context and the decision is something very different. The decision states that a layman can not represent a corporation. Therefore, the Plaintiff contends that this case never went up on review and appeal and that case no. 7478 can not be used to say that this is a collat-

eral attack as stated by the Court of Appeals in this present case.

The Bankruptcy laws were violated and the Bedford Aviation, Inc. was never legally in bankruptcy because there were never any creditors with sufficient claims to put the said Bedford Aviation, Inc. in bankruptcy. The Referee never allowed the Appellant to proceed with the bankruptcy and prove this. Instead the referree adjudicated under chapter XI in violation of the bankruptcy act. Because the Referee adjudicated under chapter XI the Bedford Aviation, Inc. was never allowed to show that the petitioning creditors put in false claims.

This was a pending bankruptcy proceeding so it had to enter Chapter 11 under section 321. If the money required to be deposited is not deposited,

the Chapter 11 proceedings have to be dismissed and the regular bankruptcy proceedings reinstated and the bankruptcy conducted as far as possible as if the chapter 11 had not been filed?

ARTICLE X—DISMISSAL AND ADJUDICATION.
(11 U.S.C. §§ 776-760.)

SEC. 376. If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 324 of this Act, are not duly filed, or if an arrangement is not proposed in the manner and within the time fixed by the court, or if an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall--

(1) where the petition was filed under section 321 of this Act, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this Act; or

(2) where the petition was filed under section 322 of this Act, enter an order, upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors: *Provided, however*, That an order adjudging the debtor a bankrupt may be entered without such hearing upon the debtor's consent.

SUMMARY

Bedford Aviation, Inc. was petitioned into bankruptcy. The claims of the petitioning creditors were false. Appellant was prevented from proving this. Appellant filed for a Chapter XI arrangement. The corporation entered Chapter XI under section 321 of the Bankruptcy act. The corporation was adjudicated bankrupt by the referee, the Honorable Thomas W. Lawless, before a plan of arrangement was confirmed, while the corporation was under a Chapter XI arrangement. See docket entrees on the said bankruptcy case. Said adjudication is in violation of the bankruptcy act. Sections 321, 376, 378, and 311 of the bankruptcy act were violated. The appeals court indicates

that the Bankruptcy was reviewed and appealed. The records show that this is not the case.

CONCLUSION

This Honorable Court should grant this Petition For Writ of Certiorari to review the errors of the United States Court of Appeals for the First Circuit and the United States District Court, the lower tribunals failed to uphold the bankruptcy laws and wrongly interpreted a decision which they claimed was a review and appeal. As in the case of Elliot v. Peirsoll the court has a right to decide every question which occurs in the cause.

CERTIFICATE OF SERVICE

I, William J. Buckley, hereby certify that I, this date made service upon the defendents by placing two copies of this certiorari in the United States Postal Service postage prepaid and addressed to :

Neil L, Lynch, Escuire
Mass. Port Authority
470 Atlantic Avenue
Boston, Massachusetts 02110

Signed under pains and penalties of perjury

Feb 8 1975 William J. Buckley